

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

DWAYNE SCOTT, :  
 :  
 Plaintiff, : CIVIL ACTION NO. 4:22-0006  
 :  
 v. : (JUDGE MANNION)  
 :  
 UNITED STATES OF AMERICA, :  
 *et al.*, :  
 :  
 Defendants. :  
 :

**ORDER**

In accordance with the court's memorandum issued this same day, **IT IS HEREBY ORDERED** that Judge Arbuckle's report (**Doc. 42**) addressing the BOP officials' motion to dismiss (Doc. 10) is **ADOPTED in part**, and the report (**Doc. 45**) addressing the United States' motion to dismiss (Doc. 9) is **ADOPTED in its entirety** as follows:

- (1) BOP officials' motion to dismiss (**Doc. 10**) is **GRANTED in part** and **DENIED in part** as follows:
  - a. The claims against Defendant Maiorana are **DISMISSED with prejudice**.
  - b. The claims against Defendant Carvajal are **DISMISSED without prejudice**.
  - c. The First Amendment claim (Count One) is **DISMISSED with prejudice**.

- d. The Eighth Amendment failure to protect claim (Count Two) is **DISMISSED without prejudice** and with leave to amend.
  - e. The Eighth Amendment excessive force claim (Count Three) is **DISMISSED with prejudice**.
  - f. The Eighth Amendment failure to intervene claim (Count Four) is **DISMISSED with prejudice**.
  - g. The Clerk of Court is directed to **TERMINATE** Defendants Kiddish, Price, Frisk, Connor, Walker Simyan, Condella, and Maiorana from this case.
- (2) The United States' motion to dismiss (Doc. 9) is **GRANTED in part** and **DENIED in part** as follows:
- a. The FTCA claim (Count Five) is **DISMISSED with prejudice** to the extent it alleges the United States is liable for BOP officials acting "intentionally, willfully, or negligently when they placed Mr. Scott in a cell with Mr. Riley, which resulted in the attack by Mr. Riley upon Mr. Scott." (Doc. 1, ¶125).
  - b. The FTCA claim (Count Five) may **PROCEED** to the extent it alleges the United States is liable for BOP officials acting "intentionally, willfully, or negligently when they repeatedly and without justification sprayed harmful chemical into Mr. Scott's cell and unjustifiably assaulted and battered him." (Doc. 1, ¶126).
  - c. The FTCA Claim (Count Five) may **PROCEED** to the extent it alleges the United States is liable for BOP officials "violat[ing] a known duty to warn and stop their colleagues from continuing and escalating the unnecessary assault on Mr. Scot" and "negligently fail[ing] to alert their colleagues to the known danger." (Doc. 1, ¶127).

- (3) Plaintiff may file an Amended Complaint in accordance with this order and the court's memorandum issued this same day on or before August 20, 2023.

*s/ Malachy E. Mannion*  
MALACHY E. MANNION  
United States District Judge

**DATE: July 20, 2023**

22-06-01-ORDER